

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 2014-23997 EDW

██████████

██████████

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████, Appellant's daughter, appeared and testified on Appellant's behalf through an interpreter she provided. ██████████, Clinical Manager, appeared and testified on behalf of the Department of Community Health's Waiver Agency, the ██████████ ██████████ ("Waiver Agency" or ██████████). ██████████, supports coordinator/care manager, also testified as a witness for the Waiver Agency.

ISSUE

Did the Waiver Agency properly decide to reduce Appellant's services through the MI Choice waiver program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a blind ██████-year-old Medicaid beneficiary who has been diagnosed with coronary heart disease; hypertension; peripheral vascular disease; arthritis; osteoporosis; depression; dementia; and transient ischemic attack. (Respondent's Exhibit C, pages 1, 8).
2. ██████ is a contract agent of the Michigan Department of Community Health (MDCH) and is responsible for waiver eligibility determinations and the provision of MI Choice waiver services.
3. Appellant has been enrolled in and receiving MI Choice waiver services through ██████, including ██████████) hours per week of Community Living Supports (CLS). (Testimony of Appellant's representative; Testimony of ██████).

4. On ██████████ staff conducted an in-home reassessment of Appellant's needs and services. (Respondent's Exhibit C, pages 1-15).
5. They also completed a Level of Care Determination (LOCD). (Respondent's Exhibit D, pages 1-6).
6. On ██████████ sent Appellant a written Advance Action Notice that his CLS would be reduced to ██████████ hours per week, effective █ days from the date of the notice, given her long term care needs. (Respondent's Exhibit A, pages 1-2).
7. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing in this matter. (Petitioner's Exhibit 1, page 1).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Appellant is claiming services through the Department's Home and Community Based Services for Elderly and Disabled. The waiver is called MI Choice in Michigan. The program is funded through the federal Centers for Medicare and Medicaid Services to the Michigan Department of Community Health (Department). Regional agencies, in this case ██████████, function as the Department's administrative agency.

Waivers are intended to provide the flexibility needed to enable States to try new or different approaches to the efficient and cost-effective delivery of health care services, or to adapt their Programs to the special needs of particular areas or groups of recipients. Waivers allow exceptions to State plan requirements and permit a State to implement innovative programs or activities on a time-limited basis, and subject to specific safeguards for the protection of recipients and the program. Detailed rules for waivers are set forth in subpart B of part 431, subpart A of part 440, and subpart G of part 441 of this chapter.

42 CFR 430.25(b)

A waiver under section 1915(c) of the [Social Security] Act allows a State to include as “medical assistance” under its plan, home and community based services furnished to recipients who would otherwise need inpatient care that is furnished in a hospital, SNF [Skilled Nursing Facility], ICF [Intermediate Care Facility], or ICF/MR [Intermediate Care Facility/Mentally Retarded], and is reimbursable under the State Plan. See 42 CFR 430.25(c)(2).

Types of services that may be offered include:

Home or community-based services may include the following services, as they are defined by the agency and approved by CMS:

- Case management services.
- Homemaker services.
- Home health aide services.
- Personal care services.
- Adult day health services
- Habilitation services.
- Respite care services.
- Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.

Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR 440.180(b)

In this case, as discussed above, Appellant has been receiving CLS through ██████████ and, with respect to such services, the Michigan Medicaid Provider Manual (MPM) states:

4.1.I. COMMUNITY LIVING SUPPORTS

Community Living Supports (CLS) services facilitate a participant's independence and promote reasonable participation in the community. Services can be provided in the participant's residence or in a community setting to meet support and service needs.

CLS may include assisting, reminding, cueing, observing, guiding, or training with meal preparation, laundry, household care and maintenance, shopping for food and

other necessities, and activities of daily living such as bathing, eating, dressing, or personal hygiene. It may provide assistance with such activities as money management, nonmedical care (not requiring nurse or physician intervention), social participation, relationship maintenance and building community connections to reduce personal isolation, non-medical transportation from the participant's residence to community activities, participation in regular community activities incidental to meeting the participant's community living preferences, attendance at medical appointments, and acquiring or procuring goods and services necessary for home and community living.

CLS staff may provide other assistance necessary to preserve the health and safety of the participant so they may reside and be supported in the most integrated and independent community setting.

CLS services cannot be authorized in circumstances where there would be a duplication of services available elsewhere or under the State Plan. CLS services cannot be authorized in lieu of, as a duplication of, or as a supplement to similar authorized waiver services. The distinction must be apparent by unique hours and units in the individual plan of services. Tasks that address personal care needs differ in scope, nature, supervision arrangements or provider type (including provider training and qualifications) from personal care service in the State Plan. The differences between the waiver coverage and the State Plan are that the provider qualifications and training requirements are more stringent for CLS tasks as provided under the waiver than the requirements for these types of services under the State Plan.

When transportation incidental to the provision of CLS is included, it must not also be authorized as a separate waiver service. Transportation to medical appointments is covered by Medicaid through the State Plan.

Community Living Supports do not include the cost associated with room and board.

*MPM, January 1, 2014 version
MI Choice Waiver Chapter, pages 12-13*

However, while CLS is a covered service, Medicaid beneficiaries are still only entitled to medically necessary Medicaid covered services and the MI Choice waiver did not waive the federal Medicaid regulation that requires that authorized services be medically necessary. See 42 CFR 440.230.

Here, it is undisputed that the Appellant has a need for some CLS and he has continuously been receiving such services. Instead, the sole dispute is the amount of CLS hours to be authorized, with the Waiver Agency deciding to reduce such services to █████ hours per week and Appellant wanting them to remain at █████ hours per week.

Appellant bears the burden of proving by a preponderance of the evidence that the Waiver Agency erred in deciding to reduce his services.

Given the record in this case, Appellant and his representative have failed to meet that burden. █████ credibly testified that she went through Appellant's typical day with Appellant's representative and the specific care provided by that representative, while she and █████ also adequately detailed the process and reasoning behind the reduction.

In response, Appellant's representative did not dispute the specific assistance or areas of need identified by the Waiver Agency, but instead argued and testified that the assistance she provides takes much longer than the Waiver Agency.

However, while Appellant generally testified about the need for more time, she failed to adequately explain or provide sufficient details as to why she needs more time. Moreover, while Appellant's representative did specifically testify that she needs more time to assist Appellant with his catheter, she appears to be seeking excessive time for assistance with that task. While it is undisputed that Appellant needs assistance with his catheter and █████ approved assistance with that task in the amount of █████ hours a week, Appellant's representative wants at least █████ hour per day for that assistance alone and more than an █████ a day for assistance with a catheter is unnecessary given █████ credible testimony.

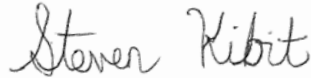
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Waiver Agency properly decided to reduce Appellant's CLS to █████ hours per week.

[REDACTED]
Docket No. 2014-23997 EDW
Decision and Order

IT IS THEREFORE ORDERED that:

The Waiver Agency's decision to reduce Appellant's services is
AFFIRMED.



Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.